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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/702,325	11/06/2003	Sampsa Fabritius	KOLS.063PA	2420

7590 07/13/2006

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EXAMINER	
CHARIOUI, MOHAMED	

ART UNIT	PAPER NUMBER
2857	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/702,325	FABRITIUS ET AL.	
	Examiner	Art Unit	
	Mohamed Charioui	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on *25 April 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *06 November 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 20-21 are rejected under 35 U.S.C. 101 because The descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts." Being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. Accordingly, it is important to distinguish claims that define descriptive material per se from claims that define statutory inventions.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7, 9, 10, 13, 14, 16, 19, 20 and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Bauman et al. (U.S. 5,875,119).

As per claims 1, 2, 4, 5, 9, 10, 13, 16, 19, 20 and 22, Bauman et al. teach a collecting system for collecting operational information on a closed system comprising at least one of the following components configured to be monitored: a processor, a memory, peripheral equipment, an interface logic (see col. 3, lines 50-62), wherein the collecting system further comprises at least one instrument, each respectively to be functionally connected only to a single one to the monitor-able components of the closed system, wherein each of the at least on instrument is configured to collect operational information on it respective single on of the monitorable the components of the closed system (see col. 4, lines 7-30), and a data collector comprising at least one register and being configured to receive operational information retrieved by the at lest one instrument, the register being configured to store said operational information (see col. 7, lines 25-38).

As per claims 6, 7 and 14, Bauman et al. further teach that the instrument is configured to store the operational information (see col. 4, lines 17-30).

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 23 are rejected under 35 U.S.C. 102(e) as being anticipated by Knight (U.S. Patent No. 6,792,392).

As per claim 1, Knight teaches a collecting system for collecting operational information on a closed system comprising at least one of the following components configured to be monitored (see Fig. 2 and col. 3, lines 25-57): a processor, a memory, peripheral equipment, an interface logic (see col. 3, lines 25-57), wherein the collecting system further comprises at least one instrument (i.e. programmable performance counter 30) (see Fig. 2 and col. 3, lines 25-57), each respectively to be functionally connected only to a single one to the monitor-able components (i.e. hardware component) (see col. 1, lines 24-35) of the closed system, wherein each of the at least on instrument is configured to collect operational information on it respective single on of the monitorable the components of the closed system (see col. 3, lines 25-57), and a data collector comprising at least one register and being configured to receive operational information retrieved by the at lest one instrument, the register being configured to store said operational information (see Fig. 2 and col. 3, lines 25-57).

As per claim 23, Knight further teaches that the collecting system comprises a plurality of the instruments and a plurality of the monitorable components, each of the plurality of instruments respectively to be functionally connected only to one of the plurality of monitorable components (see Fig. 2 and col. 3, lines 25-57).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. **Claims 3, 11, 12, 17, 18 and 21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman et al. in view of Blaauw et al. (U.S. 6,819,538).

Bauman et al. teach the system as stated above except adjusting the performance and /or power consumption of the closed system in response to analysis information received from the analyzing module.

Blaauw et al. teach this feature (see col. 10, lines 12-30 and col. 10, lines 52-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Blaauw et al.'s teaching into Bauman et al.'s invention because it would provide adjustment of the power consumption of the system. Therefore damage to the system would be prevented and proper operation of the system would be ensured.

5. **Claims 8 and 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauman et al. in view of Fross et al. (U.S. 6,384,627).

Bauman et al. teach programmable performance monitoring system (see col. 3, lines 35-38).

Bauman et al. do not explicitly teach the analyzing module and/or controlling module is programmable at run time.

Fross et al. teach this feature (see col. 9, lines 24-41). It would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate Fross et al.'s teaching into Bauman et al.'s invention because at the run

time the analyzer would receive the data from the data collector. Therefore, performance of the component would be determined and evaluated.

Response to Arguments

6. Applicant's arguments filed 4/25/06 have been fully considered but they are not persuasive.

Applicant argues that Bauman '119 does not describe at least one instrument as set forth in claim 1.

Examiner disagrees with the Applicant's argument, because the Examiner considers that the performance monitor 200 to be the at least on instrument.

Applicant argues that Bauman '119 does not teach that instruments are each respectively functionally connected on to one of the monitorable components of the close system.

Examiner disagrees with the Applicant's argument, because Applicant is claiming at least one component, Examiner considers in this case that only one of the components is being monitored. Bauman '119 teaches at least one component (i.e. computing system 102) is being monitored and an instrument (i.e. performance monitor 200) is monitoring the component 102. Examiner sees that Bauman '119 teaches one component being monitored by its respective instrument. The Examiner maintains the rejection of claims 1-21.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Contact information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Charioui whose telephone number is (571) 272-2213. The examiner can normally be reached Monday through Friday, from 9 am to 6 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc S Hoff can be reached on (571) 272-2216. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mohamed Charioui

6/27/06

MARC S. HOFF
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